

JPA File No.: JPA 05-031
A.G. Contract No.: KR05-1302TRN
Project No.: HRF-MRN-0-816
Section: Thornydale Road
Project: Road Widening
TRACS No.: HF116 01C
Budget Source Item No.:

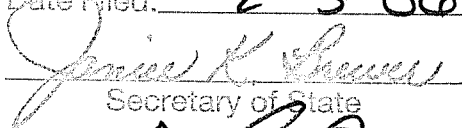

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF MARANA

THIS AGREEMENT is entered into this date February 3, 2006, pursuant to Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF MARANA, acting by and through its MAYOR and TOWN COUNCIL (the "Town").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated the undersigned the authority to execute this Agreement on behalf of the State.
 2. The Town is empowered by Arizona Revised Statutes § 9-240 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.
 3. The State has approved the exchange of Highway User Revenue Funds (HURF) pursuant to the amounts and schedule shown in column D of the table below for the construction of Thornydale Road in the Town of Marana. Such funds shall be repaid to the State by withholding from the Pima Association of Governments (PAG), Federal Apportionment and corresponding Obligation Authority as shown in columns B and C in the table below. All such transactions to be made in accordance with the schedule shown in column A.
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NO. 27994
Filed with the Secretary of State
Date Filed: 2-3-06

Secretary of State
By: 

A Federal Fiscal Year to be Processed	B STP Apportionment to be Charged to PAG	C STP Obligation Authority to be Charged to PAG	D HURF Funds to be Transferred to Marana
FFY 2006	\$1,694,713.00	\$1,749,000.00	\$1,574,100.00
FFY 2007	\$1,937,923.00	\$2,000,000.00	\$1,800,000.00
FFY 2008	\$ 968,961.00	\$1,000,000.00	\$ 900,000.00
FFY 2009	\$ 968,961.00	\$1,000,000.00	\$ 900,000.00
FFY 2010	\$ 678,273.00	\$ 700,000.00	\$ 630,000.00
Total	\$6,248,831.00	\$6,449,000.00	\$5,804,100.00

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The Town shall:

- a. Provide design plans, specifications and other such documents and services required for construction bidding and construction of the roadway reconstruction project of Thornydale Road.
- b. Be responsible for any contractor claims required for design of the project for extra compensation due to delays or whatever reason attributable to the Town.
- c. Advertise for bids and award one or more construction contracts for the project. Administer contracts for the project and make all payments to the contractor(s). Be responsible for any contractor claims required to complete the project for extra compensation due to delays or whatever reason attributable to the Town. Comply with all applicable State Laws, Rules and Regulations.
- d. Total payments by the State to the Town shall not exceed the amounts shown in column D above for the Federal Fiscal Year in which the billing is made.
- e. Upon satisfactory completion of construction, approve and accept the project on behalf of the Town, provide for the maintenance, at its own expense. Provide the State with a letter documenting the notice of the approval and acceptance of the project.

2. The State shall:

- a. Withhold from PAG Federal funds and corresponding obligation authority in the amounts and in accordance with the schedule in the table hereinabove..
- b. Within thirty-days after receipt and approval of the Town's invoice, advance the Town HURF funds in the amounts delineated in Column D for the respective Federal Fiscal Year in accordance with the schedule in the table hereinabove.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The Town assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. The Town shall require its contractors to name the State and ADOT as an additional insured in the contractor's policies. The Town shall also require its contractors to name the State and ADOT as an additional indemnitee in the Town's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to advancing Highway User Revenue Funds; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the Town and that to the extent permitted by law, the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty-days (30) written notice to the other party. It is understood and agreed that, in the event the Town cancels this Agreement, the State shall in no way be obligated to maintain said project.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be canceled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007
FAX (602) 712-7424

Town of Marana
Marana Municipal Complex
Department of Public Works
Attn: H. Thomas Gill, Jr., Director
11555 W. Civic Center Drive
Building A2, Second Floor
Marana, AZ 85656-7003
(520) 382-2600

10. Pursuant to Arizona Revised Statutes, Section 11-952 (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.


IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

TOWN OF MARANA

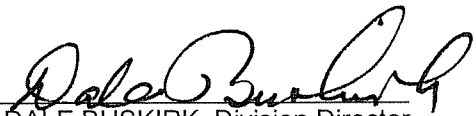
STATE OF ARIZONA

Department of Transportation

By



ED HONEA
Mayor

By


DALE BUSKIRK, Division Director
Transportation Planning Division

ATTEST:

By


JOCELYN C. BRONSON
Clerk

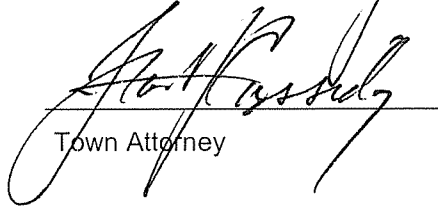
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APPROVAL OF THE TOWN OF MARANA

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the TOWN, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the TOWN under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 11th day of January, 2006.



Town Attorney

MARANA RESOLUTION NO. 2006-05

RELATING TO CAPITAL IMPROVEMENT PROJECTS; APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA FOR THE EXCHANGE OF HIGHWAY USER REVENUE FUNDS (HURF) FOR THE CONSTRUCTION OF THORNYDALE ROAD IMPROVEMENTS.

WHEREAS, the Town of Marana desires to reconstruct portions of Thornydale Road using Highway User Revenue Funds (HURF); and

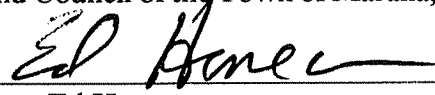
WHEREAS, the State of Arizona is willing to transfer HURF funds to the Town of Marana for the Thornydale Road improvements in exchange for other funding described in the attached intergovernmental agreement; and

WHEREAS, the Mayor and Council of the Town of Marana feel it is in the best interests of the public to enter into the intergovernmental agreement.

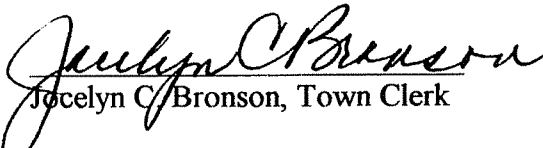
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, that the intergovernmental agreement between the Town of Marana and the State of Arizona attached to and incorporated by this reference in this resolution as Exhibit A is hereby approved, and the Mayor is hereby authorized to execute it for and on behalf of the Town of Marana.

IT IS FURTHER RESOLVED that the Town's Manager and staff are hereby directed and authorized to undertake all other and further tasks required or beneficial to carry out the terms, obligations, and objectives of the intergovernmental agreement.

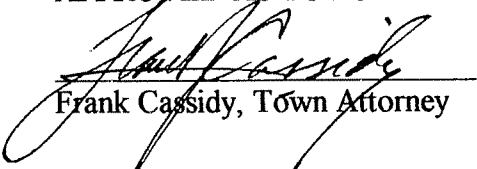
PASSED, ADOPTED, and APPROVED by the Mayor and Council of the Town of Marana, Arizona, this 17th day of January, 2006.


Mayor Ed Honea


ATTEST:


Jocelyn C. Bronson, Town Clerk

APPROVED AS TO FORM:


Frank Cassidy, Town Attorney



<p>TERRY GODDARD Attorney General</p>	<p> OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR05-1302TRN (**JPA 05-031**), an Agreement between public agencies, i.e., The State of Arizona and The Town of Marana, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: January 26, 2006

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:944322
Attachment